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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
7

8 BRACH EDWARD NORRIS,

No. 2:15-CV-00240-JTR

9 Petitioner,

10 vs.

REPORT AND  
RECOMMENDATION TO  
TRANSFER ACTION TO NINTH  
CIRCUIT COURT OF APPEALS

11 STATE OF WASHINGTON,

12 Respondent.  
13

14 Before the Court on Report and Recommendation is Petitioner Brach  
15 Edward Norris' 173-page submission, which was construed as a Petition for Writ  
16 of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254.  
17 Petitioner paid the \$5.00 filing fee and the "Petition" was filed under seal on  
18 September 18, 2015, to protect the privacy of minor(s).

19 Petitioner's submissions are a mish mash of letters, documents from other  
20 cases, transcripts, and portions of a habeas corpus petition form. Based on the  
21 actual habeas petition form received on September 18, 2015, Petitioner is  
22 challenging his 2001 Spokane County jury conviction for First Degree Child  
23 Molestation. ECF No. 5-4 at 158.

24 Petitioner previously challenged this conviction in cause number 2:05-CV-  
25 05045-FVS, *Norris v. Morgan*, which was denied on May 22, 2008, ECF No. 39.  
26 The Ninth Circuit Court of Appeals affirmed the decision of the District Court on  
27 September 23, 2010, 9CCA number 08-35645, and issued a Mandate on December  
28 3, 2010. Petitioner makes no assertion that he has received permission from the

1 Ninth Circuit Court of Appeals to file a second or successive petition challenging  
2 his Spokane County conviction.

3 This Court lacks authority to review second or successive habeas petitions  
4 filed without authorization from the Circuit Court of Appeals. 28 U.S.C. §  
5 2244(b)(3)(A). Specifically, the habeas corpus statute provides, "Before a second  
6 or successive application permitted by this section is filed in the district court, the  
7 applicant shall move in the appropriate court of appeals for an order authorizing  
8 the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); *see also*  
9 Ninth Circuit Rule 22-3.

10 When a second or successive petition is mistakenly submitted to the district  
11 Court, that Court shall refer it to the Court of Appeals. Ninth Circuit Rule 22-3(a).  
12 Accordingly, **IT IS RECOMMENDED** that this case be **TRANSFERRED** to the  
13 Ninth Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth Circuit  
14 Rule 22-3(a).

15 Petitioner is advised that such a transfer does not of itself constitute  
16 compliance with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an  
17 application for leave to proceed in the Court of Appeals and make the showing  
18 required by § 2244(b)(2). Petitioner is directed to consult this statute and Ninth  
19 Circuit rule 22-3 for further information.

### 20 **OBJECTIONS**

21 Any party may object to a magistrate judge's proposed findings,  
22 recommendations or report within fourteen (14) days following service with a copy  
23 thereof. Such party shall file written objections with the Clerk of the Court and  
24 serve objections on all parties, specifically identifying the portions to which  
25 objection is being made, and the basis therefor. Any response to the objection  
26 shall be filed within fourteen (14) days after receipt of the objection. Attention is  
27 directed to FED. R. CIV. P. 6(e), which adds additional time after certain kinds of  
28 service.

1 A district judge will make a de novo determination of those portions to  
2 which objection is made and may accept, reject, or modify the magistrate judge's  
3 determination. The judge need not conduct a new hearing or hear arguments and  
4 may consider the magistrate judge's record and make an independent determination  
5 thereon. The judge may, but is not required to, accept or consider additional  
6 evidence, or may recommit the matter to the magistrate judge with instructions.  
7 *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.  
8 § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local Rules for the Eastern  
9 District of Washington.

10 A Magistrate Judge's Recommendation cannot be appealed to a Court of  
11 Appeals; only the District Judge's order or judgment can be appealed.

12 **IT IS SO RECOMMENDED.** The District Court Executive is directed to  
13 enter this Report and Recommendation, forward a copy to Petitioner and SET A  
14 CASE MANAGEMENT DEADLINE.

15 DATED October 7, 2015.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE